



South Carolina Board of Podiatry Examiners

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December 10, 2002

To Whom it May Concern:

Enclosed please find a copy of an action taken by the Board of Podiatry Examiners concerning the following:

John David Stellwagen, D.P.M.-- Anderson, South Carolina

A copy of the Final Order dated November 21, 2002. Dr. Stellwagen's license number 103 was revoked effective December 7, 2002.

Please contact me if you have any questions.

Very truly yours,


John D. Volmer
Administrator

/amd

Enclosures

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION

Jim Hodges
Governor

Rita M. McKinney
Director

BEFORE THE STATE BOARD OF PODIATRY EXAMINERS OF SOUTH CAROLINA

In the Matter of:

JOHN DAVID STELLWAGEN, D.P.M.,

Podiatry License #103

(P-99-08)

(P-00-04)

(P-01-07)

(P-02-02)

Respondent.

FINAL ORDER

This matter came before the State Board of Podiatry Examiners (the Board) for hearing on November 1, 2002, as a result of the Notice and Complaint and Notice of Hearing dated September 25, 2002, which was served upon the Respondent and filed with the Board. A quorum of Board members was present. The hearing was held pursuant to S.C. Code Ann. §§ 40-51-150 and 40-51-160 (Co-op. 2001), and the provisions of the Administrative Procedure Act (the APA), S.C. Code Ann. §1-23-10, et seq. (1976, as amended). The State was represented by Clifford O. Koon, Jr. The Respondent appeared without counsel.

The Respondent was charged with violation of S.C. Code Ann. §§40-51-150, 40-51-160 (B)(3),(8) and (11) (Supp. 1999). The Respondent filed an Answer to the Amended Complaint on October 7, 2002. In his Answer, the Respondent admitted in part the allegations contained in Paragraphs III. 1., III. 2., and III. 8. Respondent denied the allegations contained in Paragraphs III. 7., III. 10., and III. 11. Finally, the Respondent admitted the allegations contained in Paragraph III. 4.

FINDINGS OF FACT

Based upon the preponderance of the evidence on the whole record, the Board finds the facts of the case to be as follows:

1. The Respondent is a podiatrist duly licensed to practice podiatry in the State of South Carolina, and was so licensed at all times relevant to the matters raised in the complaint except for a temporary suspension from April 25, 2002, until June 10, 2002. The Respondent currently engages in the practice of podiatry in South Carolina.

2. On or about September 4, 1999, Respondent went to a pharmacy in Clayton, Georgia.

When he arrived, he presented to a pharmacist a prescription for Enodan#12 written for him by his dentist. Respondent asked the pharmacist to alter the quantity of the drug on the prescription, which the pharmacist refused to do. Respondent then asked if he could write a prescription for the same drug in his wife's name and take possession of the drug for himself. The pharmacist refused this request as well and reported these actions to the Georgia Drugs and Narcotics Agency. This Finding is based upon the testimony of the pharmacist as well as the Admissions in Respondent's Answer.

3. A listing from the pharmacy that recorded all of the prescription transactions involving Respondent and his wife revealed that Respondent had written or called in multiple prescriptions or refills for himself and his wife. Respondent kept no chart or other medical records for himself or his wife which would document the course of treatment or medical justification for said prescriptions. Furthermore, Respondent, between September 3, 1996, and September 8, 2001, wrote prescriptions for his step-daughter without medical justification or documentation. This Finding is based upon the testimony of a pharmacist and an inspector for the State Department of Health and Environmental Control and Exhibits 10-15.

4. On November 16, 1999, Respondent was interviewed regarding these prescription drug issues. Respondent admitted to having been previously impaired on Demerol and Codeine and that he had been treated at Laurel Wood in Gainesville, Georgia, during 1992. Respondent was also found to be impaired by the North Carolina Board of Podiatry Examiners in 1993. Respondent voluntarily surrendered his Georgia license while at Laurel Wood. This Finding is based upon the testimony of the Respondent.

5. The Respondent performed surgery on his wife's foot and subsequently prescribed pain killers for her. The Respondent failed to keep a chart on his wife or otherwise document the course of treatment or medical justification for his wife's treatment. This Finding is based upon the testimony of the Respondent.

6. Respondent was sanctioned by the Board by its Order of November 19, 1996, for several acts of practicing outside the acceptable scope of the practice of podiatric surgical treatment. Said Order indefinitely suspended Respondent's license to practice podiatry, but immediately reinstated his license in a conditional status. One condition of his reinstatement was a requirement that Respondent submit monthly to the Board all of his bone surgery operative narrative reports. The Respondent violated this Order by failing to comply with this requirement. This Finding is based upon the testimony of the Respondent.

7. In June, 1999, Respondent entered into a private agreement with the Board which, among other things, continued the condition that Respondent submit his bone surgery operative narrative notes on a monthly basis. In addition, Respondent agreed to provide the Board with operative narrative reports with accompanying ICD-9 and CPT codes for all surgeries and procedures that require the making of an incision. An additional Order of the Board dated December 24, 1999, contained the same conditions. The Respondent violated this Order and Agreement by failing to comply with these conditions. This Finding is based on the testimony of the Respondent.

8. On or about January 12, 2001, Respondent performed a plantar lateral condylectomy on a patient to repair a Tailors Bunion. This procedure required bone surgery as well as an incision. Respondent failed to report this procedure to the Board in violation of the 1996 and 1999 Orders and the 1999 Agreement. This Finding is based on the testimony of the Respondent.

9. On or about February 13, 2002, Respondent's wife called 911 after becoming concerned while Respondent was in withdrawal from opiate pain medication. While at the hospital, Respondent made the comment "I could just kill her for making the call." Respondent also admitted to taking his wife's medications and to writing prescriptions for himself and for her. This Finding is based upon the testimony of the Respondent and Admissions in Respondent's Answer.

10. On or about February 21, 2002, Respondent signed a five-year monitoring contract with the Recovering Professionals Program (RPP). After a review of his medical records, RPP informed Respondent on or about March 29, 2002, that he would be required to participate in an inpatient assessment at an approved facility. Respondent refused to participate and withdrew from RPP. Respondent re-enrolled with RPP on May 6, 2002. This Finding is based upon the testimony of Respondent and RPP staff.

11. Respondent has, between November 10, 1999, and April 28, 2000, submitted false and fraudulent claims by inappropriately coding, unbundling, and submitting false and inappropriate claims for payment for medical services. This Finding is based upon the testimony of Respondent, another licensed podiatrist and State's Exhibits 7 and 8.

12. The Respondent is addicted to alcohol or drugs to such a degree as to render him unfit to practice podiatry. This Finding is based upon Respondent's unethical and unlawful receipt of controlled substances, by the volume of controlled and noncontrolled prescription medication taken by Respondent and as evidenced by the testimony of Respondent and his wife regarding Respondent's mental and physical condition.

CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this case, the Board finds and concludes as a matter of law that:

1. The Board has jurisdiction in this matter and, pursuant to the provisions of S.C. Code Ann. §§40-51-150 and 4-51-160 (Co-op. 2001), has the authority to suspend or revoke any license of the licensee within the Board's jurisdiction who is found to have violated any of the provisions of S.C. Code Ann. §§40-51-150 or 40-51-160 (Co-op. 2001) and may impose a fine not to exceed five hundred dollars for each violation of this chapter not to exceed a total fine of five thousand dollars. Additionally, pursuant to S.C. Code Ann. §40-1-120 (Co-op. 2001), upon finding that grounds for discipline exist, the Board has the authority to issue a public reprimand, place a licensee on probation or restrict the individual's license for a definite or indefinite time and prescribe

conditions to be met during probation, restriction or suspension including, but not limited to, satisfactory completion of additional education, of a supervisory period, or of continuing education programs.

2. The Respondent violated S.C. Code Ann. §40-51-150 (Supp. 1999), and is guilty of immoral or unethical conduct in that Respondent provided podiatric care to his wife, including but not limited to surgery and the prescription of controlled substances, without documentation of a course of treatment or medical justification.

3. The Respondent violated S.C. Code Ann. §40-51-150 (Supp. 1999), and is guilty of immoral or unethical conduct in that Respondent provided prescriptions for controlled substances for his step-daughter without documentation of a course of treatment or medical justification.

4. The Respondent violated S.C. Code Ann. §40-51-150 (Supp. 1999), and is guilty of immoral or unethical conduct in that Respondent attempted to persuade a pharmacist to alter a prescription or accept a fraudulent prescription.

5. The Respondent violated S.C. Code Ann. §40-51-150 (Supp. 1999), and is guilty of immoral or unethical conduct in that Respondent conducted fraudulent billing practices by inappropriately coding, unbundling and submitting false and inappropriate claims for payment for medical services.

6. The Respondent has violated S.C. Code Ann. §40-51-160(B)(8) (Supp. 1999), in that he is guilty of dishonorable, unethical and unprofessional conduct that is likely to deceive, defraud, or harm the public as evidenced by providing podiatric care to his wife, including but not limited to surgery and the prescription of controlled substances, without documentation of a course of treatment or medical justification.

7. The Respondent has violated S.C. Code Ann. §40-51-160 (B)(8) (Supp. 1999), in that he is guilty of dishonorable, unethical and unprofessional conduct that is likely to deceive, defraud, or harm the public as evidenced by providing prescriptions for controlled substances for his step-daughter without documentation of a course of treatment or medical justification.

8. The Respondent has violated S.C. Code Ann. §40-51-160(B)(8) (Supp. 1999), in that he is guilty of dishonorable, unethical and unprofessional conduct that is likely to deceive, defraud, or harm the public as evidenced by attempting to persuade a pharmacist to alter a prescription or accept a fraudulent prescription.

9. The Respondent has violated S.C. Code Ann. §40-51-160(B)(8) (Supp. 1999), in that he is guilty of dishonorable, unethical and unprofessional conduct that is likely to deceive, defraud, or harm the public as evidenced by conducting fraudulent billing practices by inappropriately coding, unbundling and submitting false and inappropriate claims for payment for medical services.

10. The Respondent has violated S.C. Code Ann. §40-51-160(B)(3) (Supp. 1999), in that he is addicted to alcohol or drugs to such a degree as to render him unfit to practice podiatry.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that:

1. The Respondent's license shall be, and hereby is, **Revoked**.
2. This Final Order shall take effect immediately upon service of the order upon the Respondent.

AND IT IS SO ORDERED.

STATE BOARD OF PODIATRY EXAMINERS

BY:



MARSHALL N. KALINSKY, D.P.M.

Chairman of the Board

11/21/02, 2002.